

When Psychiatry Meets Law: Detecting Distortions in Diminished Responsibility Defences

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Diminished Responsibility

In murder trials, ‘diminished responsibility’ is a **partial defence that is determined by psychiatric evidence**, and can result in a reduced sentence of manslaughter. As such, **it is extremely important that this process unfolds fairly and without distortion**, reducing in this way all and only those sentences that should be reduced. **Unearthing potential distortions in this process, and providing recommendations for their correction, is the central aim of this project.**

The sum of the psychiatric evidence in any given trial comes down to three things: i) [a written report](#), ii) [how that report is presented and interpreted in court](#), and iii) [how the psychiatric evidence as presented to the jury is ultimately shaped by the dyadic nature of adversarial setting](#).

Psychiatry and Law

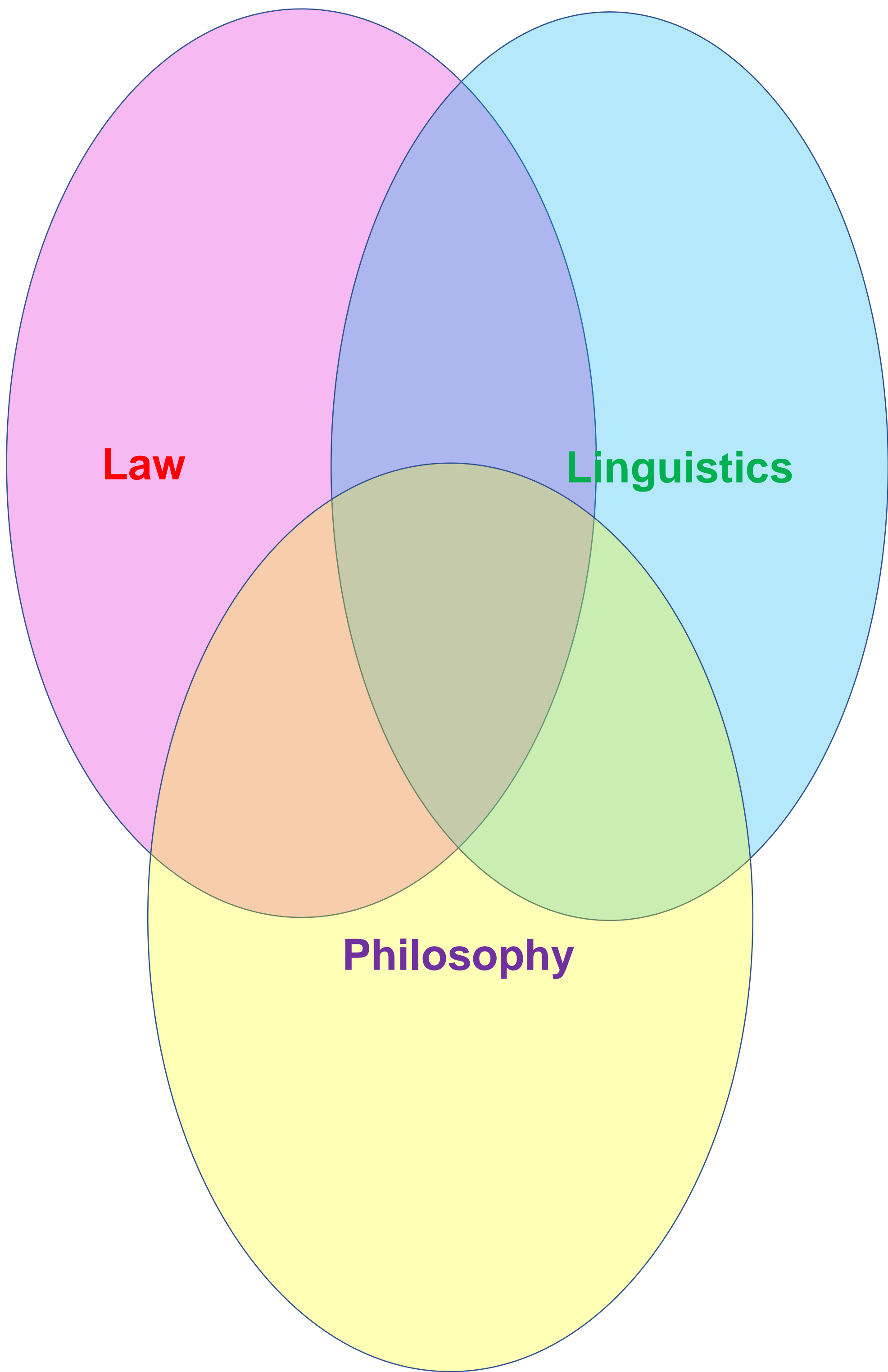
Much has been written about the **tensions between psychiatry and law**, where **differing objectives and discourses clash** (the pursuit of human wellbeing vs. the delivery of justice) and **opposing methods of enquiry** (investigative vs. adversarial) play out.

Existing literature has primarily focused on the **risk factors and causes underlying the ethical issues and biases that are considered to be at play within Forensic Psychiatry** (Commons 2004; Murrie 2015; Eastman et al. 2012; Eastman et al. 2018; Appelbaum 2008; Eastman and Rix 2021), and has generally been **directed towards individual psychiatrists in the form of practical guidance**.

Distortions

While **all biases inherent in expert psychiatric witness practice will distort the evidence, not all distortions are the result of biases**. The category of distortions is broader: it involves any situation, by whatever mechanism, that misrepresents the evidence.

Eastman and Rix (2021) have already done a thorough job of elucidating the relevant biases and of suggesting corrective measures at the level of practical advice to expert witnesses.



What do we plan to do?

We aim to **unearth other forms of distortions, the correction of which will not involve advice to individuals, but recommendations at a systemic, institutional and procedural level.**

To **examine distortions beyond individual biases**, we will examine three different, but highly complementary, forms of data, which will form the three main interlocking disciplinary strands of the project.

Legal
We will **ground and contextualise** the project with a **review of the legal literature** in relation to diminished responsibility, **interviews with practitioners**, and **data-driven analysis of contested diminished responsibility cases**.

Forensic Linguistics
The project will **examine the linguistic data associated with psychiatric evidence**. This breaks down into three layers: i), [the concrete written psychiatric report](#), ii) [how that report is presented and interpreted in court](#), and iii) [how the psychiatric evidence as presented to the jury is shaped by the dyadic nature of adversarial setting](#).

Philosophy of Psychiatry
At an abstract level there will be a **deep-dive into the hidden assumptions, motives, power structures, conceptual frameworks and ideologies that underpin the interaction between law and psychiatry**.

Research Questions

The Key Objectives of this project are to employ **linguistic, legal, and philosophical analytic methods to explore four main factors that may distort psychiatric evidence in criminal law**:

KO1: *Distorting assumptions and conceptualisations regarding the impact of psychiatric evidence on culpability*
KO2: *Distorting tensions between institutional aims and methods in psychiatry and law.*
KO3: *Distorting effects of the adversarial context.*
KO4: *Distorting tensions both within and between discourses in psychiatry and law.*

Law Work Package

This work package grounds and contextualises the other two work packages by:

- **Conducting a literature review** of the legal literature in relation to diminished responsibility
- **Carrying out interviews with legal practitioners** involved in diminished responsibility cases to establish how they consider the changes of the last decade have impacted on the contested nature of cases, and
- **Constructing a data-driven analysis of the number of contested diminished responsibility cases** over the past decade to identify the scale of the upward trend of contested cases.

Methods

Linguistics Work Package

- **Corpus methods** will allow us to explore which words occur more frequently in our corpus of psychiatric reports compared to a much larger corpus.
- **Appraisal/Stance Analysis** examines the language of evaluation, attitude and emotional engagement with a text’s propositions concerning things, people, actions, and/or ideas.
- **Speech Act Analysis** enables close examination of how a text effects changes in the world and in the recipient using a highly developed taxonomy of speech acts as well as a hierarchy of ‘what is being achieved’ (e.g. attitude expressed vs. impact on the hearer) via said speech acts.

Philosophy Work Package

- **Conceptual analysis** looks at the precise meaning of certain terms used in certain context, the concepts that they express, and the inferences, assumptions and practical consequences associated with them.
- **Genealogical critique** provides a narrative that explains the continued presence or development of a fragile and/or faulty way of thinking that is assumed to be robust or beyond doubt or revision.

